IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) No.2563/2000

# !	M/s Riviera Apartments Pvt. Ltd.	.....	Plaintiff
	VERSUS		
$ ^	Punjab National Bank	.....	Defendant

CS(OS) No. 321/2003

# !	Mrs. Shafali C. Diwanji	.....	Plaintiff
	VERSUS		
$	Punjab National Bank	.....	Defendant

CS(OS) No. 323/2003

# !	M/s Riviera Apartments Pvt. Ltd.	.....	Plaintiff
	VERSUS		
$	Punjab National Bank	.....	Defendant

Signature Not Verified
Digitally Signed By:AMULYA
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

444

CS(OS) No. 324/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff

VERSUS

$ Punjab National Bank ..... Defendant

CS(OS) No. 325/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff

VERSUS

$ Punjab National Bank ..... Defendant

CS(OS) No. 326/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff
!

VERSUS

$ Punjab National Bank ..... Defendant

CS(OS) No. 327/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff
!

VERSUS

$ Punjab National Bank ..... Defendant

CS(OS) No. 328/2003

#	M/s Riviera Apartments Pvt. Ltd.	.....	Plaintiff
!			
	VERSUS		
$	Punjab National Bank	.....	Defendant

CS(OS) No. 329/2003

#	Shri Inder P. Choudhrie	.....	Plaintiff
!			
	VERSUS		
$	Punjab National Bank	.....	Defendant

CS(OS) No. 330/2003

#	M/s Riviera Apartments Pvt. Ltd.	.....	Plaintiff
!			
	VERSUS		
$	Punjab National Bank	.....	Defendant

CS(OS) No. 331/2003

#	M/s Riviera Apartments Pvt. Ltd.	.....	Plaintiff
!			
	VERSUS		
$	Punjab National Bank	.....	Defendant

CS(OS) No. 332/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff
!

VERSUS

$ Punjab National Bank ..... Defendant

CS(OS) No. 333/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff
!

VERSUS

$ Punjab National Bank ..... Defendant

CS(OS) No. 334/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff
!

VERSUS

$ Punjab National Bank ..... Defendant

CS(OS) No. 335/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff

VERSUS

$ Punjab National Bank ..... Defendant

42

CS(OS) No. 395/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff
!

VERSUS

$ Punjab National Bank ..... Defendant

CS(OS) No. 396/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff
!

VERSUS

$ Punjab National Bank ..... Defendant

CS(OS) No. 397/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff
!

VERSUS

$ Punjab National Bank ..... Defendant

CS(OS) No. 398/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff
!

VERSUS

$ Punjab National Bank ..... Defendant

CS(OS) No. 399/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff
!

VERSUS

$ Punjab National Bank ..... Defendant

CS(OS) No. 400/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff
!

VERSUS

$ Punjab National Bank ..... Defendant

CS(OS) No. 401/2003

M/s Riviera Apartments Pvt. Ltd. ..... Plaintiff
!

VERSUS

$ Punjab National Bank ..... Defendant
! through: Mr.Dinesh Garg, Adv. with
Ms.Rachna Aggarwal, for plaintiff.
Mr.Y.P. Chandna, Adv. for defendant.

RESERVED ON : 05-07-2006

% DATE OF DECISION: 13-07-2006

CORAM:

* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. The above captioned 22 suits have been filed by Riviera Apartments Pvt. Ltd. (19 suits), Shafali Choudhrie (1 suit) and Inder Prakash Choudhrie (2 suits). Shafali Choudhrie is the daughter of Inder Prakash Choudhrie. Inder Prakash Choudhrie is the Managing Director of Riviera Apartments Pvt. Ltd. The suits relate to a commercial building bearing municipal No.D-1, Alaknanda Shopping Centre, Kalkaji, New Delhi. Different units are owned by the plaintiffs and by and under 22 separate registered lease deeds the said units were taken on lease by the defendant. For record, the tenant inducted at the time of the lease(s) was New Bank of India which merged with Punjab National Bank. Save and except 2 leases, admitted case of the parties is that all other leases expired on 16.3.1998. 2 leases expired on 22.5.1998. Details of the suits, the lessor, unit number, area, and agreed rent at the time of the expiry of the lease(s) is as under:-

Sl. No.	Suit No.	Lessor	Unit No.	Area (sq.ft.)	Rate of rent (Rs.) p.m. at the time of expiry of	Date of expiry of lease
1.	2563/2000	RAPL	GF-3	189	8,164.80	16.03.1998
2.	321/2003	SCD	GF-6	200	8,640.00	16.03.1998
3.	323/2003	RAPL	GF-5	166	7,171.20	16.03.1998
4.	324/2003	RAPL	GF-2	189	8,164.80	16.03.1998
5.	325/2003	RAPL	GF-4	233	10,065.60	16.03.1998
6.	326/2003	IPC	GF-1	268	11,577.60	16.03.1998
7.	327/2003	RAPL	B-6	200	3,456.00	22.05.1998
8.	328/2003	RAPL	SF-1	449	10,086.33	16.03.1998
9.	329/2003	IPC	B-7	195	3,369.60	22.05.1998
10.	330/2003	RAPL	FF-3	258	5,795.71	16.03.1998
11.	331/2003	RAPL	FF-2	258	5,795.71	16.03.1998
12.	332/2003	RAPL	FF-1	365	8,199.36	16.03.1998
13.	333/2003	RAPL	FF-5	258	5,795.71	16.03.1998
14.	334/2003	RAPL	FF-6	205	4,605.12	16.03.1998
15.	335/2003	RAPL	FF-4	365	8,199.36	16.03.1998
16.	395/2003	RAPL	SF-5	205	4,605.12	16.03.1998
17.	396/2003	RAPL	SF-6	278	6,245.00	16.03.1998
18.	397/2003	RAPL	SF-7	225	5,054.40	16.03.1998
19.	398/2003	RAPL	GF-7	210	9,072.00	16.03.1998
20.	399/2003	RAPL	SF-2	260	5,840.64	16.03.1998
21.	400/2003	RAPL	SF-3	283	6,357.31	16.03.1998
22.	401/2003	RAPL	SF-4	268	6,020.35	16.03.1998

2. Inder Prakash Choudhrie has filed suit No.326/2003 as also suit No.329/2003 under his own signatures. He has instituted the suit on behalf of his daughter Shafali Choudhrie stating that he is her constituted attorney. He has instituted the suits on behalf of Riviera Apartments Pvt. Ltd. in its capacity as its

Managing Director. Additionally, he has relied upon a board resolution in his favour.

3. Relationship of lessor and lessee is admitted. That the lease(s) was for a commercial purpose is also admitted. Agreed rent when the lease(s) came to an end by efflux of time is also admitted fact. Rentals for each unit are more than Rs.3500/- per month save and except the rentals for unit No.B-6 and B-7 which are a subject matter of suit No.327/2003 and 329/2003, which as noted above were Rs.3456/- and Rs.3369.60 per month.

4. On the pleadings of the parties 7 issues were framed on 21.7.2004. The issues are as under:-

"1. Whether the plaint has been signed and verified by a competent person on behalf of the plaintiff? OPP.

2. Whether the claim of damages as pleaded in the plaint is within time? OPP.

3. Whether the plaintiff is entitled to the relief of possession? OPP.

4. Whether the plaintiff is entitled to claim the damages? If so, at what rate and for what period? OPP

5. Whether the plaintiff is entitled to pendente lite and future interest; if so, at what rate? OPP.

6. Whether the defendant is occupying in the capacity of a contractual tenant as pleaded in the written statement? If so, what effect? OPD.

7. Relief."

5. By and under the same order all suits were consolidated and suit No.2563/2000 was treated as the lead case.

6. Before proceeding to deal with the issues framed I may note that the 22 leases have been admitted by the defendant and are Ex.P-1 in each suit. Dimensions of the different units as reflected in the site plan stand admitted inasmuch as the 22 site plans filed by the plaintiff(s) have been admitted by the defendant and have been exhibited as Ex.P-2.

7. As is evident from the issues framed, possession has been claimed by the plaintiffs of the different units and in addition damages on account of stated unauthorized use and occupation by the defendant have also been claimed. Rate of damages claimed is Rs.40/- per square foot in respect of the basement units, Rs.105/- per square foot for the ground floor units, Rs.80/- per square foot for the first floor units and Rs.70/- per sq. foot for the second floor units. The arrears of damages, after adjusting the payment received each month being the last agreed

rent, have also been claimed with effect from 17.3.1998 till date of suit and pendente lite damages for continued use and occupation have also been prayed for. According to the plaintiffs the last agreed rent which was tendered was accepted without prejudice and with specific intimation to the defendant that the same was being adjusted towards damages.

8. I may straight away proceed to deal with the issues as agreed between learned counsel for the parties who argued the matter issue wise.

9. On issue No.1 plaintiffs have examined Inder Prakash Choudhrie who has deposed that he is the managing director of the Rivera Apartments Pvt. Ltd. Certificate of incorporation of the company has been proved as Ex.PW-1/1. Board resolution empowering him to file the suit(s) has been proved as Ex.PW1/2. Power of attorney executed by Shafali Choudhrie in his favour has been proved as Ex.PW1/3. Learned counsel for the defendant did not dispute that in view of the Ex.PW-1/1 and PW-1/2 it stands established that Inder Prakash Choudhrie is competent to institute and file the suits on behalf of the company as also to sign and verify the pleadings. In view of the Ex. PW-1/3, learned counsel conceded that Inder Prakash Choudhrie was competent to institute the suit on behalf of his

daughter as he was duly empowered to do so. I accordingly decide issue No.1 by holding that it stands established that the suits have been signed and verified as also instituted by a duly competent person.

10. On issue No.2, learned counsel for the plaintiff(s) conceded that claim for damages preceding 3 years from the date of filing of the suit would be barred by limitation and therefore on issue No.2, I hold that reckoned from the date of filing of the 22 suits, claim preceding 3 years from date of filing of the suits alone is within limitation.

11. Issue No.3 and 6 were the real issues which were debated at the bar by learned counsel for the parties. As noted above, rent for 20 units is above Rs.3,500/- per month and rent for 2 units is below Rs.3,500/- per month.

12. Notwithstanding issue No.6 as framed, learned counsel for the defendant conceded that in effect the plea of defendant was that it was a tenant holding over.

13. Learned counsel for the parties conceded that to succeed, plaintiff had to establish relationship of lessor and lessee; that the agreed rent was more than Rs.3,500/- and that the tenancy stands determined. First limb is an admitted fact because the defendant has not disputed the relationship of landlord and tenant. On

the second limb i.e. the monthly rent, save and except the 2 suits the admitted position is that the monthly rent was more than Rs.3,500/- per month. In respect of 2 units agreed position is that the agreed last paid rent was Rs.3,500/- per month.

14. Since Delhi Rent Control Act 1958 prohibits the eviction of a tenant paying rent less than Rs.3,500/- per month save and except on the grounds set out in Section 14 of the Act and forum of rent court being created to try eviction petitions, status of the defendant qua the leased premises subject matter of suit No.327/2003 and 329/2003 is that of a statutory tenant and plaintiffs of said suits cannot evict the defendant from leased units by way of a civil suit. I accordingly hold that in suit No.327/2003 and 329/2003 issue No.3 is decided against the plaintiff(s) and in favour of the defendant. Qua issue No.6, I hold that status of the defendant is that of a statutory tenant ad the suit(s) is not maintainable.

15. I now discuss the third limb which was seriously contended in the other suits and in respect whereof a dispute arises between the parties.

16. As is to be noted from issue No.3 and 6, fate of issue No.3 would depend on fate of issue No.6. Case pleaded by the defendant is that even after the expiry

of the lease period, plaintiffs continued to accept the last agreed rent and therefore a contractual tenancy came into existence because of tender of rent by the defendant and its acceptance by the plaintiffs.

17. Documentary evidence of the parties which has a bearing on the third limb requires to be noted for the purposes of decision of issue No.3 and 6, apart from the oral testimony of Inder Prakash Choudhrie.

18. 20 leases, as per lease stipulated period came to an end on 16.3.1998 and 2 leases came to an end on 22.5.1998. Before lease period expired under all 22 leases, Inder Prakash Choudhrie wrote a letter on 28.11.1997, Ex.PW-1/4, to the Assistant General Manager of the defendant informing that since the leases were going to expire and since the lessors were willing to extend the leases parties should agree on the rent payable. In the said letter he indicated the increased rent which the landlords were desirous of and indicated that if said rent was agreed to be paid, leases could be extended.

19. He wrote another letter dated 7.1.1998, Ex.PW-1/10, in which while referring to Ex.PW-1/4, he informed the Assistant General Manager of the defendant that in spite of over a month having lapsed he had not heard anything on

the issue. He specifically informed the bank that with effect from the date the tenancy lapses the landlord would be charging liquidated damages @ Rs.25,000/- per day for the first 3 months and thereafter @ Rs.35,000/- per day till possession was returned.

20. On 19.3.1998, vide Ex.PW-1/5, Inder Prakash Choudhrie informed the defendant that the leases having expired the landlords were willing to renew the leases at the rentals indicated in the said letter. On 26.3.1998, 20 leases having expired, vide Ex.PW-1/12 Inder Prakash Choudhrie informed the defendant that henceforth damages @ Rs.25,000/- per day would be charged. On 17.6.1998, vide Ex.PW-1/20, a bill in the sum of Rs.23,27,345/- was sent towards damages for unauthorised use and occupation by the defendant. On 6.8.1998, vide Ex.PW-1/22 another bill was sent and while raising the said bill amount received from the bank being the monthly cheque received as per last agreed rent was shown as having been adjusted towards damages. Again on 23.10.1998, vide Ex.PW-1/25 claim for damages was raised.

21. In between, vide Ex.P-6, on 9.7.1998, the bank wrote informing that it was willing to have the leases extended.

22. I may eschew other proved documents except Ex.P-10, being bank's letter dated 23.10.1998 wherein the bank offered to have the lease extended at the rates set out in the said letter.

23. Parties had negotiations, but unfortunately at the regional level. On 15.1.2000, the authorities at the regional level agreed, subject to approval from the competent authority, to pay the following lease rentals:-

Basement	-	Rs.30/- per square foot.
Ground floor	-	Rs.80/- per square foot.
First floor	-	Rs.70/- per square foot.
Second floor	-	Rs.60/- per square foot.

24. Inder Prakash Choudhrie agreed, and the decision was minuted vide Ex.P-5 dated 15.1.2000 recording as aforenoted.

25. Unfortunately, the higher authorities did not give consent to the rates agreed to between the plaintiff and the regional office. This led to the institution of suit No.2563/2000.

26. Purpose of filing one suit appears to be to bring pressure on the competent authority to give approval to what was agreed to by the regional authorities of the bank. The said pressure did not bear the desired result. So, 21 other suits were filed in the year 2003.

27. When the correspondence aforenoted was being exchanged between the parties and various discussions were being held, the bank continued to tender cheques at the last agreed rent which was received by the plaintiff(s).

28. From the factum of tender of the cheques as per the last agreed monthly rent and acceptance thereof by the plaintiffs, defendant seeks to urge that the defendant is a tenant holding over. Shri Y.P.Chandna, learned counsel for the defendant urged that the status of the defendant being that of a tenant holding over, a month to month tenancy came into existence on the same terms as contained in the lease(s) agreement Ex. P-1 and admittedly no notice of termination of the lease(s) having been served upon the defendant by the plaintiffs, plaintiffs cannot regain possession.

29. From a narration of evidence hereinabove noted in paras 18 to 24, it is apparent that the facts are not in dispute and the questions being, one which arises very often - rather is raised very often - whether the status of the defendant is of a tenant holding over needs adjudication in light of said facts. I may address the issue at some length and discuss the law.

30. Section 105 of the Transfer of Property Act, 1882 defines a lease of an

immovable property as a transfer of a right to enjoy immovable property for a certain time, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms. The transferor is called the lessor and the transferee is called the lessee. The price is called the premium and the money, share, service or other thing to be so rendered is called the rent.

31. Section 106 of the Transfer of Property Act 1882 deals with the duration of leases and states that in the absence of a contract, or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee, by six month's notice and a lease of immovable property for any other purpose shall be deemed to be lease from month to month, terminable, on the part of either lessor or lessee by 15 days' notice. Section 107 of the Transfer of Property Act, 1882 stipulates that a lease of immovable property from year to year, or for any term exceeding 1 year can be made only by and under a registered instrument. Law is clear. If a lease is evidence by a contract, as in the

instant case, the duration of the lease would be as per the contract and at the expiry of the lease period as per contract the lease expires by efflux of time. Expiry of lease by efflux of time results in the determination of the relationship between the lessor and the lessee and since the lease expires under the contract by efflux of time, no notice of determination of the lease is required.

32. Once a lease expires, the mandate of clause q of Section 108 of the Transfer of Property Act 1882 makes it the bounden duty of the lessee to put the lessor into possession of the leased premises.

33. To the extent aforenoted there is no problem in law, but as in the present case, more often than not, rent is tendered post expiry of the lease period by efflux of time and accepted by the landlord. What happens?

34. Section 116 of the Transfer of Property Act 1882 reads as under:-

> "**116. Effect of holding over-**If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106."

35. The tenant who tenders the rent starts claiming that the landlord having

accepted the rent has consented to his continuing in possession as a lessee and he claims a status of a tenant holding over. The effect thereof would be that this tenancy i.e. tenancy by holding over would require a notice of determination under Section 106 of the Transfer of Property Act 1882. In the absence of such a notice, suit for ejectment would fail.

36. Where a lessor seeks to regain possession from the lessee on the ground that the lease has expired by efflux of time or that the lease has been determined it would be a misnomer to label such a suit as one for possession. Really speaking it is a suit for ejectment of a tenant who has lost a right to continue to occupy the leased premises. Possession is regained from a trespasser or a person who is in possession of a property purely gratis.

37. As noted above, mandate of clause q of Section 108 of the Transfer of Property Act 1882 is that on the expiry of the lease the lessee is bound to hand over possession of the leased premises to the lessor and therefore the lessor would be entitled to maintain an action to compel the lessees to abide by the mandate of clause q of Section 108 of the Transfer of Property Act 1882.

38. What is the nature of possession of this lessee who continues to retain

possession without complying with his legal obligation to restore possession?

39. A person who enters upon the property of another without authority of law is a trespasser. It could be argued that the very next moment after the period of lease stands expired the act of entering upon property by the tenant is an act of trespass. But law says no. A lessee who continues in possession after expiry of the lease, without the consent of the lessor or without any agreement between the parties or in disagreement with the lessor, is treated in law as a tenant by sufferance. But where the lessor consents to the continued possession of lessee on the same terms and conditions as per the original lease a tenancy by holding over comes into operation.

40. The words *"accepts rent or otherwise assents to his continuing in possession"* in Section 116 of the Transfer of Property Act contemplates that from the side of the lessee there should be an offer to take a new lease and on the side of the lessor there must be a definite consent to the continuation of possession. In other words there must be a bilateral contract.

41. Such a bilateral contract could be express or implied. Thus mere continuance of possession after the expiry or determination of the lease is not

enough to entitle the tenant to establish tenancy by holding over.

42. More often than not, the only evidence which surfaces is the tender of rent and its acceptance by the landlord. As observed in the decision reported as AIR 1951 SC 285, *Eastern Investment Ltd. Vs. Commissioner of Income Tax* the acceptance of rent is only one form of the assent of the lessor to the lessee remaining in possession of the property. But, as observed in the decision reported as AIR 1949 FC 124, *Kai Khushroo Bezonjee Capadia Vs. Bai Jerbai Hirjibhoy Warden & Anr.*, the acceptance must be of rent as such.

43. Since law requires a bilateral agreement between the parties for the tenant continuing to holding over, offer and acceptance of rent is at best an evidence raising a presumption of assent but would not amount to a conclusive proof of such assent. It could be rebutted by other evidence.

44. In order that the acceptance of rent may amount to assent of the lessor it has to be shown that the offer of rent was made on the express ground that the lessee intended to continue the lease and that the acceptance was with the full knowledge of the nature of the offer. This is a question of fact which has to be determined from the circumstances of each case. Greater is the period of continued possession

coupled with receipt of rent, stronger would be the presumption in favour of the lessee.

45. Where a tenant fails to establish a case of holding over, his status would be, as noted above, that of a tenant at sufferance. The difference in the status of a tenant holding over and a tenant at sufferance was explained by the Supreme Court in the decision reported as AIR 1996 SC 140, *R.V. Bhupal Prasad Vs. State of A.P.* wherein their Lordships said:-

> "8. Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. In Mulla's Transfer of Property Act (7th Edn.) at page 633, the position of tenancy at sufferance has been stated thus: A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without the consent of the person entitled. A tenancy at sufferance does not create the relationship of landlord and tenant. At page 769, it is stated regarding the right of a tenant holding over thus: The act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remaining in possession after the determination of the term,

the common law rule is that he is a tenant on sufferance. The expression "holding over" is used in the sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the land-lord's consent. The former is called a tenant by sufferance in the language of English law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with the consent of the lessor is in a better position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent was paid and accepted. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical.

13. In view of the settled possession of law, the possession of the appellant is as tenant at sufferance and is liable to ejectment in due course of law. But his possession is not legal nor lawful. In other words, his possession of the theatre is unlawful or litiguous possession. The appellant may remain in possession until he is ejected in due course in execution of the decree in the suit filed by the respondent. His possession cannot be considered to be settled possession. He is akin to a trespasser, though initially he had lawful entry."

46. Dealing with the issue whether accepting rent after serving upon the tenant a notice to quote amounts to a waiver under Section 113 of the Transfer of Property Act, in the decision reported as 2006 (4) SCC 205, *Sarup Singh Gupta*

Vs. S. Jagdish, their Lordships of Supreme Court held:-

"6 ... A mere perusal of Section 113 leaves no room for doubt that in a given case, a notice given under Section 111, Clause (h), may be treated as having been waived, but the necessary condition is that there must be some act on the part of the person giving the notice evincing an intention to treat the lease as subsisting. Of course, the express or implied consent of the person to whom such notice is given must also be established. The question as to whether the person giving the notice has by his act shown an intention to treat the lease as subsisting is essentially a question of fact. In reaching a conclusion on this aspect of the matter, the Court must consider all relevant facts and circumstances, and the mere fact that rent has been tendered and accepted, cannot be determinative.

7 A somewhat similar situation arose in the case reported in Shanti Prasad Devi vs Shankar Mahto 2005 (5) SCC 543. That was a case where the landlord accepted rent even on expiry of the period of lease. A submission was urged on behalf of the tenant in that case that Section 116, Transfer of Property Act was attracted and there was a deemed renewal, of the lease. Negativing the contention, this Court observed that mere acceptance of rent for the subsequent months in which the lessee continued to occupy the premise even, after the expiry of the period of the lease, cannot be said to be a conduct signifying his assent to the continuing of the lease even after the expiry of the lease period. Their Lordships noticed the conditions incorporated in the agreement itself, which provided for renewal of the lease and held that those conditions having not been fulfilled, the mere acceptance of rent after expiry of period of lease did not signify assent to the continuance of the lease.

8 In the instant case, as we have noticed earlier, two notices to quit were given on 10th February, 1979 and 17th March, 1979. The suit was filed on 2-6-1979. The tenant offered and the landlord accepted

the rent for the months of April, May and thereafter. The question is whether this by itself constitute an act on the part of the landlord showing an intention to treat the lease as subsisting. In our view, mere acceptance of rent did not by itself constituted an act of the nature envisaged by Section 113, Transfer of Property Act showing an intention to treat the lease as subsisting. The fact remains that even after accepting the rent tendered, the landlord did file a suit for eviction, and even while prosecuting the suit accepted rent which was being paid to him by the tenant. It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting. We cannot ignore the fact that in any event, even if rent was neither tendered nor accepted, the landlord in the event of success would be entitled to the payment of the arrears of rent. To avoid any controversy, in the event of termination of lease the practice followed by courts is to permit the landlord to receive each month by way of compensation for the use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended. In the instant case, we find no other fact or circumstance to support the plea of waiver. On the contrary the filing of and prosecution of the eviction proceeding by the landlord suggests otherwise."

47. In the report published as 2006 (1) SCC 228, *C. Albert Morris vs K. Chandrasekaran* it was observed as under:-

> "26 ... Much argument was advanced on the receipt of the rent by the landlord after the cancellation of the lease. The consensus of judicial opinion in this country is that a mere continuance in occupation of the demised premises after the expiry of the lease, notwithstanding the receipt of an amount by the quondam landlord

would not create a tenancy so as to confer on the erstwhile tenant the status of tenant or a right to be in possession. ...

32 ... We are, therefore, of the opinion that mere acceptance of rent by the landlord, the first respondent herein, from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer on the erstwhile tenant the status of a tenant or a right to be in possession. We answer this issue accordingly."

48. In the report published as 2005 (5) SCC 543, *Shanti Prasad Devi vs Shankar Mahto* it was observed as under:-

"18 We fully agree with the High Court and the first appellate court below that on expiry of period of lease, mere acceptance of rent for the subsequent months in which the lessee continued to occupy the lease premises cannot be said to be a conduct signifying 'assent' to the continuance of the lessee even after expiry of lease period. ..."

49. In the report published as 129 (2006) DLT 338, *Central Bank of India vs Lalit Kumar Bhargava* it was observed as under:-

"12 The law is well-settled that no tenant can be allowed to retain possession of the tenanted premises without payment of rent / damages for its use and occupation. The law is equally well-settled through a catena of judgments, both of High Courts and of Supreme Court, that mere acceptance of rent after of notice to quit does not amount to creation of new tenancy and that notice to quit is not waived by mere acceptance of rent.

13 The learned Single Judge has noted various judgments in paragraphs 5 and 14 of the impugned judgment in support of the above legal proposition. The learned senior Counsel for the appellant could not cite even a single judgment to support his plea that acceptance of rent by the landlord after service of notice to quit amounts to waiver of said notice."

50. In the report published as 118 (2005) DLT 52, *Yashbir Sharma vs Mrs. Sulakshna Lal* it was observed as under:-

"19 It is true that rent was being paid by Appellant No.1 to Respondent Nos.1 to 4 and that they were unreservedly accepting this amount, but I do not think this fact by itself would indicate that a new relationship had developed between Appellant No.1 and Respondents No.1 to 4. After all Appellant No.1 was using the premises belonging to Respondents No.1 to 4 and he was under an obligation to pay for its user. On the other hand, Respondents No.1 to 4 had no real option but to accept the amount tendered by Appellant No.1 because refusal would have unnecessarily opened a new arena of dispute. It is perhaps in view of this that neither Appellant No. 1 insisted on any rent receipt nor did Respondents No. 1 to 4 issue any rent receipt to him. There was, under the circumstances, no clear intention of the parties to treat the payments made by Appellant No.1 as rent for use and occupation of the suit premises. This is a concurrent finding of fact arrived at by both the courts below."

51. In the judgment pronounced by R.C. Chopra, J. in CS(OS) No.1611/2000 on 27.08.2003 titled as *Ashoka Promoters (P) Ltd. vs Captain Virender Singh* it

was observed as under:-

> "8 The plea of the defendants that they had become tenants by holding over cannot be sustained for the reason that mere acceptance of rent after the expiry of Lease does not ipso facto result in renewal of the Lease. In 'Firm Sardari Lal Vishwa Nath and others vs. Pritam Singh' AIR 1978 SC 1518, (1978) 4 SCC 1, [1979]1 SCR111, it was clearly held by Apex Court that where a Lease gets determined by efflux of time but the tenant continues to be in possession, the mere acceptance of rent from the tenant without proof of extension of Lease cannot be taken as a case of creation of fresh tenancy. It was also held that in case a lease comes to an end and is determined by any of the modes prescribed under Section 111 of the Transfer of Property Act, the landlord can exercise is right of re-entry and there is no question of terminating the contract which has already come to an end. Thus, the plea of the defendants that by merely remaining in possession or by paying rent a fresh tenancy was created in their favour or that the had become tenants by holding over cannot be accepted. Their admission, thus, is that the Lease in their favour had expired by efflux of time and no fresh Lease Deed was executed in their favour."

52. In the report published as 104 (2003) DLT 151, *Delhi Jal Board vs Surendra P. Malik* it was observed as under:-

> "12 It is no longer a grey area that where a tenancy had otherwise expired by efflux of time but the tenant continued in possession of the premises, mere acceptance of rent by the landlord could neither renew the tenancy nor create a new one. ..."

53. In the report published as 2002 (5) AD (Delhi) 7 {094}, *Food Corporation of India vs Kuljinder Pal Singh Dhillon* it was observed as under:-

"9 In the case in hand, it is not disputed that after issuance of notice of termination of tenancy dated 11.3.89 the plaintiff-landlord had been accepting rent from the defendant-tenant. Other undisputed fact is that the suit for recovery of possession and arrears of rent etc was filed within a few months of the issuance of notice in the year 1989 itself. On the face of this factual position and view taken by Division Bench of this Court, there is no escape from the conclusion that mere acceptance of rent / user charges by the plaintiff-landlord was itself not sufficient to attract the provisions of Section 113 of Transfer of Property Act as no other acts on the part of the plaintiff landlord has been brought on record showing his intention to treat the lease subsisting. On the contrary the factum of filing of the suit for possession within few months from issuance of notice clearly negate such an intention on the part of the landlord. I, therefore, see no substance in the contention of the appellant-FCI that notice terminating the tenancy dated 11.3.89 stood waived by the plaintiff-landlord by acceptance of the rent. The question is, therefore, answered accordingly."

54. In the report published as 99 (2002) DLT 139, *Shri Prithvi Raj Bhalla vs Industrial Cables (India) Ltd.* it was observed as under:-

"15 ... It was contended on behalf of the defendant that even though the tenancy had expired by efflux of time, the predecessor-in-interest and the plaintiff accepted rent from the defendant and, therefore, it has to be presumed that the defendant was holding over the suit property in accordance with the provisions of Section 116 of the Transfer of Property Act. No evidence is led on behalf of the defendant to prove and establish that the aforesaid amount was received either by predecessor-in-interest of the plaintiff or by the plaintiff himself as rent and not by way of damages. Merely because an

amount of Rs. 1,000/- per month was received by the said persons, it could not be said that they had consented to renewal of tenancy. It was held by the Supreme Court in the Sardari Lal v. Pritam Singh, that mere acceptance of rent from a lessee would not manifest the intention of the lessor to renew the lease and that acceptance of rent would be necessary to assert that the lessor assented to the lessee continuing in possession and the lessor intended renewal of the lease. In the present suit there is no evidence on record at all to show and prove that there was something more than even payment and acceptance of rent which would establish that the lessor assented to the lessee continuing in possession and the lessor intended renewal of the lease. ..."

55. In the report published as 2000 (52) DRJ 228, *Bank of Rajasthan Ltd. vs Sarin & Co.* it was observed as under:-

"Plain reading of Section 113 of the Transfer of Property Act shows that it consists of two essential components: (a) the express or implied consent of the person to whom the notice is given and (b) act of the person giving notice showing the intention to treat the lease subsisting. In order to constitute waiver, both the ingredients must concurrently exist, which means the act of acceptance of rent by itself without reference to the intention of the lessor, cannot be deemed to be the waiver. Illustration (a) of Section 113 of the Act cannot be constructed so as to water down the substantive provision of Section 113. Thus in addition to the receipt of the rent by the landlord there should be other conclusive evidence to show that the landlord intended to treat the lease as subsisting. Of course, the intention can be gathered from attending circumstances but these circumstances, must be such which irresistibly lead to the conclusion, that the lessor had intended to keep lease subsisting. The conduct of the parties must justify such an inference.

In this connection we may also refer to the observation of a Division Bench of this Court (consisting of Hon'ble Mr. Justice R.C. Lahoti as his lordship then were and Hon'ble Mr. Justice S.N. Kapoor) in *Vijayshree Commercial (P) Ltd. vs Tika Jagjit Singh Bedi* 66 (1997) DLT359 = 1996 (38) DRJ66

14.1 Illustration (a) appears to give an impression that mere acceptance of rent due in respect of the property since the expiration of the notice waives the notice. This impression is created only if the illustration is read divested from the context of Section 113. Section 113 speaks of notice being waived by an Act on the part of the person giving the notice "showing an intention to treat the lease as subsisting". The emphasis is on requisite intention of the person giving the notice. Such intention as constituting an essential ingredient on waiver cannot be bidden a goodbye reading the illustration.

14.2An illustration does not exhaust the full contents of the section which it illustration but it can neither curtail nor expand its ambit. (Sambhu Nath vs State of Ajmer., AIR1956 SC 404 , 1956 CriLJ794 , [1956]1 SCR199 ; Anirudh vs. Administrator-General of Bengal, AIR 1949 P.C. 244. An illustration to a section in a statute cannot have the effect of modifying the language of the section which alone forms language of the section which alone forms the enactment (Bengal Nagpur Railway Co. Ltd. vs. Ruttanji Ramji, AIR 1939 PC 67).

14.3 Use of the word "rent" by the tenant-appellant in his letter dated 3.12.1993 is not by itself decisive of his having tendered the amount as evidence of demise between the landlord and tenant remaining alive. Moreover be inferred that the landlord having accepted the rent rendered along with the letter use necessarily accepting tendered amount so as to revive or create a demise by the landlord to the tenant....".

The preponderous weight of authorities of several High Courts shows that mere acceptance of rent by the landlord from the tenant, after service of notice to quit and institution of the suit by itself would not constitute waiver of notice, or proof of the intention of the landlord to renew the lease. Reference can be made to Ilahibux vs. Munir Khan AIR 1953 Nagpur 219, Ram Lal vs Sardari Lal AIR 1968 J & K 22, Moti Lal vs. Basant Lal vs. Anr. AIR 1956 All 175, Purohit Lakshmanchandji vs. Vetche Sree Ramachandra Murty, AIR1976 AP 428 and Ramjilal vs. Gulabrao AIR1979 Bom 44 .

In this case as observed above, after the expiry of the period of the notice of termination of the tenancy on 31st January, 1997 suit was instituted within a period of two months, which was being vigorously pursued. Thus, the conduct of respondent-landlord accepting the rent in January, 1998 i.e. after about Twelve months, ipso-facto does not establish that his intention was to renew the lease. Attending circumstances do not show the intention of the respondent-landlord was to waive of the notice to quit. No intention to renew or revive the tenancy can be spelt out on the part of respondent / landlord or inferred from the mere use of the word "rent" in the above said letter dated 12.1.1998. The findings of the trial court are thus fully justified on the basis of the material on record."

56. In the report published as 77 (1999) DLT 809, *Amar Chand Talwar vs M/s. Export Promotion Council for Handicrafts* it was observed as under:-

"10 As regards waiver of notice dated 7.1.1995, it is an admitted position that after institution of the suit, the plaintiffs have received the amount for use and occupation of the suit premises. It is well settled that mere acceptance of the rent by the landlord does not amount to

waiver of notice to quit under Section 106 of the Transfer of Property Act. ..."

57. Seeking guidance from the aforenoted decisions, facts on record do not establish a case of tenancy by holding over notwithstanding the continued possession of the defendant for nearly 2 years in one suit and 5 years in others coupled with acceptance of rent by the plaintiffs for the reason, before leases expired, vide Ex. PW-1/4, on 28.11.1997, plaintiffs clearly informed the defendant that the leases would be expiring in the month of March 1998 and plaintiffs were willing to renew the leases but at the rent stated in the said letter. This was reiterated on 7.1.1998 vide Ex.PW-1/10. Consent of the defendant was sought. Immediately when the lease period came to an end in respect of 20 leases, on 19.3.1998, vide Ex. PW-1/5 the plaintiff quoted the rate which they would be charging towards damages for use and occupation. PW-1/12 was written on 26.3.1998 reiterating that damages would be charged. Bills were sent on 17.6.1998, Ex.PW-1/20 and on 6.8.1998, Ex.PW-1/22. On 23.10.1998, vide Ex. PW-1/25 once again it was reiterated that the plaintiffs are willing to allow the

defendant to continue to occupy the various units as a tenant provided increased rent stated in the letter was paid. Various letters have been addressed by the plaintiff on the issue and even bills were raised on various dates after adjusting the amount received from the defendant being the last agreed rent, clearly indicating the balance amount which had to be paid towards damages. That the bank continued in possession for 5 years is neither here nor there in the facts and circumstances of the case. In the decision reported as (1973) 2 SCC 388, *Bari Lal vs. Municipal Corporation of Indore* the tenant continued in possession for nearly 5 years after expiry of the lease and yet was held to be not holding over. Status held was of a tenant by sufferance.

58. It is not a case where the tenant has forwarded the last paid rent stating that it was for the current month of occupation and its acceptance by the landlord.

59. Ex.P-6 evidences that on 9.7.1998 the bank evidenced its intention to continue with the lease and pay increased rent. Ex.P-5 shows that on 15.1.2000 the officers at the regional level agreed at the increase rents but unfortunately the head office did not agree.

60. The evidence brings out that the defendant, a public sector bank, was

informed by the landlords towards the end of the lease period that if the bank was interested, landlord was willing to renew the lease but at a rent commensurate with the market rate of the rent. The parties negotiated on the rent. Possession continued. Last agreed rent was tendered, but accepted by the landlord and adjusted towards damages. There has been an extensive correspondence between the parties. Parties were attempting to be ad idem on the rent. The evidence, far from suggesting acceptance by the plaintiff to the continued possession as a tenant is to the effect that the rent was being accepted in partial satisfaction of the damages with a clear indication from the landlord to the tenant that if parties could not agree on the rent, landlord would not accept the status of the defendant as a tenant.

61. Shri Chandna, learned counsel for the defendant that it was the term of the lease, Ex.P-1, that the lease was liable to be extended and therefore the defendant was entitled to continue to occupy the premises.

62. Reliance was placed upon clause-3 of the lease deeds (language being identical save and except arrears and rent) I may note clause of the lease deed exhibited as Ex.P-1 in suit No.2563/2000. It reads as under:-

"3. That the lease shall be for a period of 10 years and during this period and its extensions, if any, the rent will be increased by 20% after every three years of the then rent applicable i.e. in March 1991 the rent will be Rs.4725 +.20% i.e. Rs.5670 and in March 1994 Rs.5670 + 20% i.e. Rs.6804 and in March 1997 Rs.8164.80 and *so on so forth.* Both Lessor and the Lessee shall have the right to vacate after the expiry of the lease by giving 3 months notice. Fresh lease deed will be executed after the expiry of 10 years."

63. Learned counsel placed reliance upon the words 'and so on so forth' to urge that the lease had to be extended for all times to come.

64. Admittedly, original lease was entered into between the parties in the year 1988 and the aforesaid clause is a part of the original lease. 10 years expired in the year 1998 and therefore it is obvious that the 10 years period referred to came to an end.

65. Clause relied upon required execution of a fresh lease deed after the expiry of 10 years period. It does not record the rent which had to be paid. Intention of the clause was that if the parties could agree on the rent payable, a fresh lease would be executed between the parties.

66. Towards this end parties negotiated but could not agree on the agreed rent.

67. In India, law does not prohibit a perpetual lease, but clear and unambiguous language would be required to infer such a lease. If the language is ambiguous,

the Court would opt for an interpretation negativing a plea which results in a perpetual lease being created. Extension of this principle is that Courts always lean against a perpetual renewal and hence where there is a clause for renewal, subject to the same terms and conditions, it would be construed as giving a right to renew as per the original lease but not a right to further renewals, unless of course the language is clear. In the instant case the original lease envisaged extension up to 10 years and stipulated increase in rent. Beyond that fresh lease deed required to be executed. The clause does not even state that the renewals would be on the same terms and conditions. Thus, unless parties agreed to the terms of renewal, that was the end of the matter.

69. Save and except suit No.327/2003 and 329/2003, I accordingly decide issues No.3 and 6 in favour of the plaintiffs and against the defendant. It is held that with effect from the date of expiry of the lease as per Ex. P-1 occupation by the defendant was neither in the capacity as a contractual tenant nor as a tenant holding over. Possession was without authority of law and that of a unlawful occupant. Plaintiffs would be entitled to possession against the defendant.

8/

70. Issue No.4 requires 3 things to be determined. Firstly, whether the plaintiff (s) is entitled to damages. If yes, secondly at what rate. Thirdly, for what period.

71. In view of decision on issues 3 and 6, the inevitable conclusion is that save and except suit No.327/2003 and 329/2003, plaintiff(s) are entitled to damages in all other suits. In view of decision on issue No.2, the inevitable conclusion is that the period for which damages can be claimed is 3 years prior to 14.11.2000 in suit No.2563/2000 as said suit was filed on 14.11.2000 and in the other suits except suit No.327/2003 and 329/2003 damages can be claimed for 3 years prior to 31.1.2003 i.e. the date of filing of said suits.

72. Coming to the rate, learned counsel for the plaintiff(s) conceded that save and except Ex.P-5 being minutes of the meeting dated 15.1.2000 wherein officers of the bank at the regional office consented to the rate at Rs.30/- per sq.foot for per month for the basement, Rs.80/- per sq.foot per month for the ground floor, Rs.70/- per sq.foot per month for the first floor and Rs.60/- per sq.foot per month for the second floor, no other evidence has been led by the plaintiff(s).

73. Evidence of defendant is the statement of DW2, Shri A.K.Sharma, Chief Manager of the bank wherein he stated that as per information gathered by him

from Shri Vijay Kumar, a property dealer, market rate of rent was between Rs.18/- to Rs.20/- per sq.foot per month, Rs.50/- per sq.foot per month, Rs.25/- to Rs.30/- per sq.foot per month and Rs.20/- to Rs.25/- per month for the basement, ground floor, first floor and second floor respectively. He also stated that for a building in Alakananda Commercial Complex, Bank of Maharashtra had executed a lease for a first floor unit at a rent of Rs.30/- per sq.foot per month on 26.8.1997. DW-3, Shri R.C.Baharwana, Manager Bank of Maharashtra stated that for a lease entered into on 26.8.1997 for an area of about 2000 sq.feet monthly rent of Rs.86,000/- was paid to the landlord. D.W.5, Shri Sher Singh from the office of the sub-registrar proved Ex.DW-5/1 to DW-5/6 being 6 lease deeds for 6 first floor units evidencing that with effect from 26.10.1997 rate of rent was Rs.30/- per sq.foot per month for the units in the building at Alakananda Shopping Complex.

74. Evidence of the witnesses of the bank shows that all witnesses spoke about the same building and the lease deeds Ex.DW-5/1 to Ex.DW-5/6.

75. Perusal of Ex.DW-5/1 to Ex.DW-5/6 shows that the lease deeds dated 20.7.1999 create a lease with effect from 26.8.1997 and that after 5 years, rent was to be increased by 25% i.e. by Rs.7.50 per sq.foot per month.

76. Shri Dinesh Garg, learned counsel for the plaintiffs urged that Ex.DW-5/1 to Ex.DW-5/6 shows that Bank of Maharashtra was already in occupation as a tenant and being a case of renewal, the landlords were faced with a choice of litigation or agreeing to lower rentals and therefore rent was concessional. He urged that said rent figure has to be ignored. Counsel urged that Ex.P-5 contained an admission of the officers of the defendant qua the rent reflected therein. Per contra, Shri Y.P. Chandna, learned counsel for the bank urged that Ex.P-5 had to be ignored as the same does not evidence a concluded contract. It was at best a tentative agreement subject to ratification by the head office which never came. Counsel urged that rent reflected in Ex.DW-5/1 to Ex.DW-5/6 reflected a fair market rent.

77. A division bench of this Court, in the decision reported as 2005 (VI) A.D. Delhi 515, *The National Radio & Electronic Co. Ltd. (M/s.) Vs. Motion Pictures Association* observed:-

> "34. Judicial notice is taken of only such facts of which there can be only one view. In the light of the aforesaid position in law, there can be no manner of doubt that so far as the increase of rent is concerned, judicial notice can be taken of a fact that over a certain period rents generally have arisen. However, so far as quantification of the rate at which the

> increase has actually taken place, a finding can be arrived at only on the basis of legal evidence and material establishing the actual rates at which properties have been let over the period and comparison of such properties with the property which is the subject matter of the lis. Rents may very based on location of properties, nature of construction, period of construction, purpose/user for which the premises are let, variation between demand for tenanted premises and availability of premises and even factors relating to the position of the economy. Therefore, while a learned trial judge may be justified in taking judicial notice of the fact that rents have arisen over a certain period of time in the area in question, it would be the incumbent upon a person laying a claim of entitlement to mesne profits to prove the same by cogent and reliable evidence in accordance with law.
>
> As has been noticed in the judicial pronouncements noticed here-in-above, the evidence may include documentary evidence relating tenancies of properties in the area which can be summoned from the office the sub-Registrar or by examination of property dealers, oral testimony of the parties to the litigation and persons in the trade of real estate, other property owners."

78. The extreme ends of the rival evidence show that the best evidence led by the plaintiff(s) is Ex.P-5, but as rightly pointed out by learned counsel for the bank Ex.P-5 cannot bind the defendant inasmuch as till not approved by the headquarters, the tentative agreement did not bind the bank. On the other extreme, the best evidence of the defendant is in Ex.DW-5/1 to Ex.DW-5/6 being the lease

deeds in respect of a first floor premises taken on rent by bank of Maharashtra in a building in the same commercial complex in which the suit property is situate. However, as rightly pointed out by counsel for the plaintiff(s) the leases show a prior possession of the bank and are a continuation of the existing leases and therefore it could be presumed that there is some element of concession while fixing the agreed rent. Going by Ex.DW-5/1 and DW-5/6 rate of rent per sq.foot per month for a first floor comes to Rs.30/- as of 26.8.1997 and with 25% increase every 5 years the rent comes to Rs.37.50 per sq.foot per month. Thus as of 26.8.2002 the rent payable under the said leases would be Rs.37.50 per sq.foot per month.

79. One relevant fact needs to be noted in the context of the aforesaid evidence being that the rent which was being paid by the bank when the suits were filed, being the agreed rent as per the lease deeds which expired in the month of March 1998 and May 1998 was Rs.43.20 per sq.foot per month for the ground floor evidenced by the lease deeds pertaining to the ground floor units (see suit No.2563/2000). For the first floor and second floor units the rent in the year 1998 was Rs.22.46 per sq.foot per month (see suit No.330/2003 & suit No.395/2003).

80. Facts noted in para 79 above pertaining to the leases Ex.P-1 in all the suits show that for ground floor units rent being paid in March 1998 was Rs.43.20 per sq.foot per month and for the first floor and second floor units it was nearly half. Thus, there is intrinsic evidence that the ground floor units let out by the plaintiffs were at a rent double that of the first and second floors and that the rent of the first floor and second floor units was the same. Taking into consideration that the leases in favour of Bank of Maharashtra were a continuation of the existing leases and there is strong probability that there is every likelihood of some concession in rent.

81. As noted above, rent paid by Bank of Maharashtra in August 1997 for first floor units was Rs.30/- per sq.foot per month which rose to Rs.37.50 per sq.foot per month in August 2002. Vis-a-vis what was paid by the defendant to the plaintiff(s) for the first floor units at the time of the lease and what was paid by Bank of Maharashtra there is intrinsic evidence of increase in rent over the years.

82. Evidence on record probabilises that by the year 1998 a fair market rent for the ground floor units would be at least Rs.70/- per sq.foot per month and as of the year 2000 the same would be in the vicinity of Rs.85/- per sq.foot per month. I

accordingly hold the aforesaid to be the fair market rent for the ground floor units. Taking cue from the lease deeds Ex.P-1 filed by the plaintiff which show first floor and second floor rental being half of the ground floor rental I hold that the fair market rent for the first floor and second floor units would be Rs.35/- per sq.foot per month as of the year 1998 and Rs.43/- per sq.foot per month as of the year 2000.

83. As per a statement furnished to the Court by learned counsel for the plaintiff(s) the under noted sums were received by the plaintiff(s) from the defendant for the period 3 years prior to the filing of the suit:-

Sl. No.	Suit No.	Amount
1.	2563/2000	Rs.2,75,153.76
2.	321/2003	Rs.3,71,520.00
3.	323/2003	Rs.3,08,361.60
4.	324/2003	Rs.3,51,086.40
5.	325/2003	Rs.4,32,820.80
6.	326/2003	Rs.4,97,836.80
7.	328/2003	Rs.4,33,712.33

8.	330/2003	Rs.2,49,215.46
9.	331/2003	Rs.2,49,215.46
10.	332/2003	Rs.3,52,572.41
11.	333/2003	Rs.2,49,215.46
12.	334/2003	Rs.1,98,020.02
13.	335/2003	Rs.3,52,572.41
14.	395/2003	Rs.1,98,020.02
15.	396/2003	Rs.2,68,535.00
16.	397/2003	Rs.2,17,339.20
17.	398/2003	Rs.3,90,096.00
18.	399/2003	Rs.2,51,147.59
19.	400/2003	Rs.2,73,364.26
20.	401/2003	Rs.2,58,875.05

84. Damages for unauthorized use and occupation for a period 3 years prior to the suit(s) as per fair market rent determined by me herein above come as under noted in column-1 and after adjusting the sum received as noted in para 83 above balance amount awarded is as per column-2 hereunder:-

Sl. No.	Suit No.	Column-1	Column-2
1.	2563/2000	Rs.4,76,280/-	Rs.2,01,126.24
2.	321/2003	Rs.6,12,000/-	Rs.2,40,480.00
3.	323/2003	Rs.5,07,960/-	Rs.1,99,598.40
4.	324/2003	Rs.5,78,340/-	Rs.2,27,253.60
5.	325/2003	Rs.7,12,980/-	Rs,2,80,159.20
6.	326/2003	Rs.8,200,080/-	Rs.3,22,243.20
7.	328/2003	Rs.6,95,052/-	Rs.2,61,339.67
8.	330/2003	Rs.3,99,384/-	Rs.1,50,168.54
9.	331/2003	Rs.3,99,384/-	Rs.1,50,168.50
10.	332/2003	Rs.5,65,020/-	Rs.2,12,447.59
11.	333/2003	Rs.3,99,384/-	Rs.1,50,168.54
12.	334/2003	Rs.3,17,340/-	Rs.1,19,319.98
13.	335/2003	Rs.5,65,020/-	Rs.2,12,447.59
14.	395/2003	Rs.3,17,340/-	Rs.1,19,319.98
15.	396/2003	Rs.4,30,344/-	Rs,1,61,809.00
16.	397/2003	Rs.3,48,300/-	Rs.1,30,960.80

17.	398/2003	Rs.6,42,600/-	Rs.2,52,504.00
18.	399/2003	Rs.4,02,480/-	Rs.1,51,332.41
19.	400/2003	Rs.4,38,080/-	Rs.1,64,719.74
20.	401/2003	Rs.4,14,864/-	Rs.1,55,988.95

85. Issue No.4 is accordingly decided by holding that defendant succeeds as far as suit No.327/2003 and 329/2003 are concerned. No damages are awarded in said suits to the plaintiffs. In the other suits damages awarded after adjustment of the amount received for a period 3 years prior to the filing of the suit are as per column-2 of para 84 above. In terms of Order 20 Rule 12 CPC I further decree that mesne profits pendente lite i.e. after suit(s) was filed till expiry of 3 years from the date of decree or delivery of possession would be @Rs.85/- per sq.foot per month for the ground floor units and Rs.43/- per sq.foot per month for the first floor and second floor units.

86. That leaves only issue No.5 to be decided. Needless to state, he who retains money payable to a third party not only prevents the third party from using the money but even gains at his expense by using the money payable for his personal gain and must therefore recompense with interest. In the absence of any evidence

led by the parties I go by the rate of interest at which banks were paying on fixed deposits. The same was 10% per annum in the year 2000 and as of today it is 8% per annum. I take the mean figure and hold that rate of interest to which plaintiff (s) would be entitled would be 9% per annum. Since rent would have accrued and become payable each calendar month on the monthly rent payable, per sq.foot rent determined by me, I hold that with effect from each month on the sum determined towards balance damages payable, plaintiff(s) would be entitled to interest @9% per annum. Lest there be any debate on this issue, I clarify that for the damages awarded for say the month of January 2000, interest would be payable on the sum payable for the month of January 2000 till paid and likewise for the damages awarded for the month of February 2000, interest would be payable on the sum payable for the month of February 2000 till paid and so on.

87. All suits save and except suit No.327/2003 and 329/2003 are decreed as aforesaid. Suit No.327/2003 and suit No.329/2003 are dismissed.

88. One set costs are awarded to the plaintiffs jointly against the defendant in sum of Rs.30,000/-.

July 13, 2006 **PRADEEP NANDRAJOG, J.**
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